

2022
CUMULATIVE SUPPLEMENT
TO
MISSISSIPPI CODE
1972 ANNOTATED

Issued September 2022

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2022 REGULAR SESSION
OF THE LEGISLATURE

PUBLISHED BY AUTHORITY OF
THE LEGISLATURE

SUPPLEMENTING

Volume 20

Titles 93 to 95

(As Revised 2021)

For latest statutes or assistance call 1-800-833-9844

By the Editorial Staff of the Publisher



LexisNexis®



Digitized by the Internet Archive
in 2022 with funding from
Public.Resource.Org

2022
CUMULATIVE SUPPLEMENT
TO
MISSISSIPPI CODE

1972 ANNOTATED

Issued September 2022

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2022 REGULAR SESSION
OF THE LEGISLATURE

PUBLISHED BY AUTHORITY OF
THE LEGISLATURE

SUPPLEMENTING

Volume 20

Titles 93 to 95

(As Revised 2021)

For latest statutes or assistance call 1-800-833-9844

By the Editorial Staff of the Publisher



LexisNexis®

QUESTIONS ABOUT THIS PUBLICATION?

For EDITORIAL QUESTIONS concerning this publication, or REPRINT PERMISSION, please call:
800-833-9844

For CUSTOMER SERVICE ASSISTANCE concerning replacement pages, shipments, billing or other matters, please call:

Customer Service Department at	800-833-9844
Outside the United States and Canada	518-487-3000
FAX	518-487-3584

For INFORMATION ON OTHER MATTHEW BENDER PUBLICATIONS, please call:

Your account manager or	800-223-1940
Outside the United States and Canada	518-487-3000

Copyright © 2022

by

THE STATE OF MISSISSIPPI

All rights reserved.

LexisNexis and the Knowledge Burst logo are registered trademarks, and Michie is a trademark of Reed Elsevier Properties, Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties, Inc.

ISBN 978-0-327-09628-3 (Code set)
ISBN 978-1-66331-642-4 (Volume 20)



LexisNexis®

Matthew Bender & Company, Inc.

9443 Springboro Pike, Miamisburg, OH 45342

www.lexisnexis.com



User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2022 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2022 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

- Southern Reporter, 3rd Series
- United States Supreme Court Reports
- Supreme Court Reporter
- United States Supreme Court Reports, Lawyers' Edition, 2nd Series
- Federal Reporter, 4th Series
- Federal Supplement, 3rd Series
- Federal Rules Decisions
- Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

- American Law Reports, 6th Series
- American Law Reports, Federal 2nd
- Mississippi College Law Review
- Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2022 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

User Information

Visit the LexisNexis website at <http://www.lexisnexis.com> for an online bookstore, technical support, customer support, and other company information.

For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 9443 Springboro Pike, Miamisburg, OH 45342.

September 2022

LexisNexis

MISSISSIPPI CODE
1972
ANNOTATED
VOLUME

TITLE 93.

DOMESTIC RELATIONS

Chapter 11.	Enforcement of Support of Dependents.	93-11-1
Chapter 17.	Adoption, Change of Name, and Legitimation of Children.	93-17-1
Chapter 19.	Removal of Disability of Minority.	93-19-1

CHAPTER 5.

DIVORCE AND ALIMONY

§ 93-5-1. Causes for divorce.

JUDICIAL DECISIONS

10. Cruel and inhuman treatment.

Because wife filed for divorce on the ground of habitual cruel and inhuman treatment after the effective date of the amendment, the amended language of the statute applied to her complaint, plus the parties participated in discovery regarding wife's allegations of spousal domestic abuse; her last-minute motion to amend the complaint to track the language of the amended section was futile and the chancellor did not err by denying the motion. *Wangler v. Wangler*, 294 So. 3d 1138, 2020 Miss. LEXIS 74 (Miss. 2020).

17. —Evidence.

Although wife claimed that husband deprived her of sleep, she offered no testimony to suggested that his alleged criticism was the ultimate cause of her sleep deprivation, plus she acknowledged that she was already losing sleep with their young child and she worked 12-hour shifts as a nurse in the emergency room; wife failed to prove cruel and inhuman treat-

ment. *Wangler v. Wangler*, 294 So. 3d 1138, 2020 Miss. LEXIS 74 (Miss. 2020).

Record showed that despite husband's alleged criticism of wife and her forced isolation, she communicated regularly with her family and friends; thus, wife failed to prove cruel and inhuman treatment. *Wangler v. Wangler*, 294 So. 3d 1138, 2020 Miss. LEXIS 74 (Miss. 2020).

False accusations by husband of wife's infidelity, made only a handful of times over a short period of time, did not amount to habitual cruel and inhuman treatment. *Wangler v. Wangler*, 294 So. 3d 1138, 2020 Miss. LEXIS 74 (Miss. 2020).

Wife's claim that husband abandoned her on multiple occasions was contradicted by the evidence; in part, there was no indication that husband refused to pick her up or intentionally left her stranded at work, and wife failed to show habitual cruel and inhuman treatment. *Wangler v. Wangler*, 294 So. 3d 1138, 2020 Miss. LEXIS 74 (Miss. 2020).

Despite wife's allegations of spousal domestic abuse, she clearly planned to move

with husband to North Carolina, and it was not until the day they were packing up their apartment to move that she decided not to go, plus the record showed that she posted various message on social media expressing her love and admiration for husband both before and during their marriage; she failed to prove habitual cruel and inhuman treatment. *Wangler v. Wangler*, 294 So. 3d 1138, 2020 Miss. LEXIS 74 (Miss. 2020).

Despite wife's allegations that husband

was critical and controlling, criticism and controlling behavior did not fulfill the requirements of a divorce on the grounds of habitual cruel and inhuman treatment, and while odd and even disrespectful at times, husband's behavior did not amount to such; the parties' immaturity, lack of communication, frivolous quarreling, and incompatibility did not amount to cruel and inhuman treatment. *Wangler v. Wangler*, 294 So. 3d 1138, 2020 Miss. LEXIS 74 (Miss. 2020).

§ 93-5-23. Custody of children; alimony; effect of military duty on custody and visitation.

JUDICIAL DECISIONS

ANALYSIS

II. CUSTODY.

17. In general.
18. Factors in determining award of custody.
21. Practice and procedure.

VII. OTHER MATTERS.

62. Review.

of sexual abuse of the minor while he was in the mother's care, and the court was not statutorily required to appoint a guardian ad litem based merely on an unsubstantiated assertion found in the pleadings of one of the parties. *Embrey v. Young*, 337 So. 3d 247, 2021 Miss. App. LEXIS 499 (Miss. Ct. App. 2021), cert. denied, 336 So. 3d 653, 2022 Miss. LEXIS 114 (Miss. 2022).

II. CUSTODY.

17. In general.

Trial court properly awarded a mother paramount physical custody of the parties' child subject to the visitation rights of the father, because, as there were no accusations of abuse or neglect mandating the appointment of a guardian ad litem (GAL), and the GAL's failure to submit a written report to the chancery court did not constitute reversible error. *Gibson v. Gibson*, 333 So. 3d 103, 2022 Miss. App. LEXIS 2 (Miss. Ct. App. 2022).

18. Factors in determining award of custody.

Chancery court properly awarded the parties joint legal custody of their two minor children, awarded the mother physical custody, awarded the father visitation, and ordered him to pay child support because the chancellor discussed each of the Albright factors, there was insufficient and unsubstantiated evidence

21. Practice and procedure.

Chancellor did not abuse his discretion by not appointing a guardian ad litem (GAL); mother's written request for a GAL did not include any specifics or even an express allegation of abuse or neglect, nothing indicated that she presented any specifics to the chancellor prior to trial, and by the time of trial, her allegations had been investigated and deemed unsubstantiated. *Savell v. Manning*, 325 So. 3d 1208, 2021 Miss. App. LEXIS 356 (Miss. Ct. App. 2021).

VII. OTHER MATTERS.

62. Review.

Because a child had reached the age of majority, a father's issues raised on appeal regarding modification of child custody were moot; because the issue of whether there was any material change in circumstances affecting the child's custody was moot, the issue of whether the court should have applied the Albright factors

was also moot. *Wise v. Broome*, — So. 3d —, 2022 Miss. App. LEXIS 27 (Miss. Ct. App. Jan. 25, 2022).

§ 93-5-24. Types of custody awarded by court; joint custody; no presumption in favor of maternal custody; access to information pertaining to child by noncustodial parent; restrictions on custody by parent with history of perpetrating family violence; rebuttable presumption that such custody is not in the best interest of the child; factors in reaching determinations; visitation orders.

JUDICIAL DECISIONS

13. Modification proper.

Chancellor's modification of the joint physical and legal custody custody of the parties' minor children to award sole physical custody to the mother, rather than to the father, was appropriate because the record supported the chancellor's finding that the parents' inability to

co-parent was substantial enough to constitute a material change in circumstances that adversely affected the children such that the children were placed in counseling. *Schmidt v. Schmidt*, 339 So. 3d 163, 2022 Miss. App. LEXIS 148 (Miss. Ct. App. 2022).

CHAPTER 9.

PARENTAGE

UNIFORM LAW ON PATERNITY

§ 93-9-35. Support by mother.

Cross References — Temporary Assistance for Needy Families (TANF) program, see § 43-17-1 et seq.

CHAPTER 11.

ENFORCEMENT OF SUPPORT OF DEPENDENTS

In General. 93-11-1

IN GENERAL

Sec.

93-11-71. Judgment for overdue child support; forgiveness of arrears under certain circumstances; credit toward arrearage under certain circumstances.

§ 93-11-65. Custody and support of minor children; additional remedies; determination of emancipation; temporary support awarded pending determination of parentage; effect of military duty on custody and visitation.

JUDICIAL DECISIONS

ANALYSIS

I. CUSTODY OF CHILDREN.

2. Factors in determining custody—extramarital conduct.
4. —Choice of child.

II. SUPPORT OF CHILDREN.

22. Emancipation.

I. CUSTODY OF CHILDREN.

2. Factors in determining custody—extramarital conduct.

4. —Choice of child.

Chancery court precisely followed the requirements of this section, as it allowed the parties 15-year-old son to express his preference, acknowledged that the son preferred to live with his father, and then clearly articulated the reasons that it nev-

ertheless did not find that the son's preference favored the father because of the father's drinking and permitting the son to drive a vehicle as an unlicensed and underage driver. *Garrison v. Courtney*, 304 So. 3d 1129, 2020 Miss. App. LEXIS 561 (Miss. Ct. App. 2020).

II. SUPPORT OF CHILDREN.

22. Emancipation.

Because a child had reached the age of majority, a father's issues raised on appeal regarding modification of child custody were moot; because the issue of whether there was any material change in circumstances affecting the child's custody was moot, the issue of whether the court should have applied the Albright factors was also moot. *Wise v. Broome*, — So. 3d —, 2022 Miss. App. LEXIS 27 (Miss. Ct. App. Jan. 25, 2022).

§ 93-11-71. Judgment for overdue child support; forgiveness of arrears under certain circumstances; credit toward arrearage under certain circumstances.

(1) Whenever a court orders any person to make periodic payments of a sum certain for the maintenance or support of a child, and whenever such payments as have become due remain unpaid for a period of at least thirty (30) days, a judgment by operation of law shall arise against the obligor in an amount equal to all payments that are then due and owing.

(a) A judgment arising under this section shall have the same effect and be fully enforceable as any other judgment entered in this state. A judicial or administrative action to enforce the judgment may be begun at any time; and

(b) Such judgments arising in other states by operation of law shall be given full faith and credit in this state.

(2) Any judgment arising under the provisions of this section shall operate as a lien upon all the property of the judgment debtor, both real and personal, which lien shall be perfected as to third parties without actual notice thereof only upon enrollment on the judgment roll. The department or attorney

representing the party to whom support is owed shall furnish an abstract of the judgment for periodic payments for the maintenance and support of a child, along with sworn documentation of the delinquent child support, to the circuit clerk of the county where the judgment is rendered, and it shall be the duty of the circuit clerk to enroll the judgment on the judgment roll. Liens arising under the provisions of this section may be executed upon and enforced in the same manner and to the same extent as any other judgment.

(3) Notwithstanding the provisions in subsection (2) of this section, any judgment arising under the provisions of this section shall subject the following assets to interception or seizure without regard to the entry of the judgment on the judgment roll of the situs district or jurisdiction and such assets shall apply to all child support owed including all arrears:

(a) Periodic or lump-sum payments from a federal, state or local agency, including unemployment compensation, workers' compensation and other benefits;

(b) Winnings from lotteries and gaming winnings that are received in periodic payments made over a period in excess of thirty (30) days;

(c) Assets held in financial institutions;

(d) Settlements and awards resulting from civil actions;

(e) Public and private retirement funds, only to the extent that the obligor is qualified to receive and receives a lump-sum or periodic distribution from the funds;

(f) Lump-sum payments as defined in Section 93-11-101; and

(g) Unclaimed property as described in Section 89-12-1 et seq.

(4) Notwithstanding the provisions of subsections (1) and (2) of this section, upon disestablishment of paternity granted pursuant to Section 93-9-10 and a finding of clear and convincing evidence including negative DNA testing that the obligor is not the biological father of the child or children for whom support has been ordered, the court shall disestablish paternity and may forgive any child support arrears of the obligor for the child or children determined by the court not to be the biological child or children of the obligor, if the court makes a written finding that, based on the totality of the circumstances, the forgiveness of the arrears is equitable under the circumstances.

(5) In any case in which a child receives assistance from block grants for Temporary Assistance for Needy Families (TANF), and the obligor owes past-due child support, the obligor, if not incapacitated, may be required by the court to participate in any work programs offered by any state agency.

(6) A parent who receives social security disability insurance payments who is liable for a child support arrearage and whose disability insurance benefits provide for the payment of past due disability insurance benefits for the support of the minor child or children for whom the parent owes a child support arrearage shall receive credit toward the arrearage for the payment or payments for the benefit of the minor child or children if the arrearage accrued after the date of disability onset as determined by the Social Security Administration.

HISTORY: Laws, 1985, ch. 518, § 13; Laws, 1997, ch. 588, § 134; Laws, 1999, ch. 512, § 16; Laws, 2007, ch. 548, § 2; Laws, 2009, ch. 564, § 6; Laws, 2010, ch. 465, § 1; Laws, 2011, ch. 530, § 2, eff from and after July 1, 2011; Laws, 2022, ch. 486, § 3, eff from and after July 1, 2022.

Amendment Notes — The 2022 amendment, in (3), deleted “and” at the end of (e), added “and” and made a related change in (f), and added (g).

CHAPTER 15.

MISSISSIPPI TERMINATION OF PARENTAL RIGHTS LAW

§ 93-15-113. Conduct of hearing for involuntary termination of parental rights; counsel for parent.

JUDICIAL DECISIONS

3. Substantial compliance.

Youth court substantially complied with the requirements set forth in subsection (2) because although it did not address all the rights set forth in the subsection at the beginning of the hearing to terminate parental rights, the youth court did address the mother’s right to an attorney and right to appeal at the onset of the

hearing when it considered her motion for a continuance; the mother failed to show with any specificity what prejudice occurred due to the timing of the explanation. *M.A.S. v. Lamar County Dep’t of Child Prot. Servs.*, — So. 3d —, 2021 Miss. App. LEXIS 385 (Miss. Ct. App. Sept. 21, 2021), cert. denied, — So. 3d —, 2022 Miss. LEXIS 84 (Miss. 2022).

§ 93-15-119. Involuntary termination in chancery court for reasons of abandonment, desertion, or parental unfitness to raise the child; standard of proof.

JUDICIAL DECISIONS

I. Under Current Law.

1. Mental unfitness.

Social worker testified at length about the physical, emotional, and mental trauma the child experienced at the hands of both the mother and her boyfriend, and it was in the children’s best interest to bypass reunification and terminate the

mother’s parental rights; there was substantial credible evidence in the record to support the youth court’s decision to terminate the mother’s parental rights and to support its finding that this decision was in the best interest of all four children. *Bullock v. Miss. Dep’t of Child Prot. Servs.*, — So. 3d —, 2022 Miss. App. LEXIS 232 (Miss. Ct. App. July 19, 2022).

§ 93-15-121. Grounds for termination.**JUDICIAL DECISIONS****I. Under Current Law.****ANALYSIS**

1. Termination proper.
2. Conviction for child exploitation.

1. Termination proper.

Social worker testified at length about the physical, emotional, and mental trauma the child experienced at the hands of both the mother and her boyfriend, and it was in the children's best interest to bypass reunification and terminate the mother's parental rights; there was substantial credible evidence in the record to support the youth court's decision to terminate the mother's parental rights and to support its finding that this decision was in the best interest of all four children. *Bullock v. Miss. Dep't of Child Prot. Servs.*, — So. 3d —, 2022 Miss. App. LEXIS 232 (Miss. Ct. App. July 19, 2022).

Youth court did not err by finding clear and convincing evidence that a mother's rights had to be terminated due to habitual alcoholism and other drug addiction because according to the testimony of both a family protection worker and the guardian ad litem (GAL), the mother was given multiple opportunities to prove her sobriety to the youth court and comply with the service agreement and failed to do so; both the worker and GAL testified about the mother's long history with drug abuse. *M.A.S. v. Lamar County Dep't of Child Prot. Servs.*, — So. 3d —, 2021 Miss. App. LEXIS 385 (Miss. Ct. App. Sept. 21, 2021), cert. denied, — So. 3d —, 2022 Miss. LEXIS 84 (Miss. 2022).

Chancery court properly terminated a father's parental rights as in the best interests of the child based on abandonment because, despite the fact that the father continued to pay child support, based on the father's own testimony and his almost five-year absence from the child's life, there was clear and convincing evidence that supported the chancellor's decision that reunification between the father and the child was not desirable toward obtaining a satisfactory permanency outcome. *Smith v. Doe*, 314 So. 3d 154, 2021 Miss. App. LEXIS 134 (Miss. Ct. App. 2021).

Mother and her spouse, who wished to adopt the child, proved that termination of the father's parental rights was proper as the father failed to exercise reasonable visitation or communication with the child because the father last saw the child in July 2015 for a supervised visit; he had not attempted to communicate with the child since that visit; and, when asked what kind of relationship he had with the child, the father responded that the child was not in his life. *In re M.R.H.*, 312 So. 3d 385, 2020 Miss. App. LEXIS 556 (Miss. Ct. App. 2020).

2. Conviction for child exploitation.

In a termination of parental rights case, the trial court did not err in finding that the father was convicted of child exploitation as it was inconsequential whether he committed that crime with a person under the age of 18 or an officer posing as a person under the age of 18 as either could result in a conviction for child exploitation; and his intent was present. *In re M.R.H.*, 312 So. 3d 385, 2020 Miss. App. LEXIS 556 (Miss. Ct. App. 2020).

CHAPTER 16.

GRANDPARENTS' VISITATION RIGHTS

§ 93-16-3. Who may petition for visitation rights; when; court in which to file petition.

JUDICIAL DECISIONS

ANALYSIS

- 1. In general.
- 5. Viable relationship.

1. In general.

Chancellor did not err in denying a grandfather statutory grandparent-visitation rights because the grandfather failed to prove the parents unreasonably denied him visitation with his granddaughters, and, therefore, the chancellor was not required to consider the best interest factors before concluding the grandfather was not entitled to grandparent visitation. *Sims v. Sims*, 2021 Miss. App. LEXIS 342 (Miss. Ct. App. Aug. 24, 2021).

Because the court of appeals found no error in the chancellor's determination that a grandfather failed to establish a "viable relationship" with his grandchild-

dren, and the chancellor did not err in determining that the parents did not unreasonably withhold grandparent visitation, there was no error in the chancellor's determination that she was not required to consider the best interests of the children. *Sims v. Sims*, 2021 Miss. App. LEXIS 342 (Miss. Ct. App. Aug. 24, 2021).

5. Viable relationship.

Chancellor did not err in denying a grandfather statutory grandparent-visitation rights because the grandfather failed as a matter of law to meet the first statutory requirement, the existence of a "viable relationship" with respect to his granddaughters; the chancellor was not required to undertake a children's-best-interests analysis under the circumstances. *Sims v. Sims*, 2021 Miss. App. LEXIS 342 (Miss. Ct. App. Aug. 24, 2021).

CHAPTER 17.

ADOPTION, CHANGE OF NAME, AND LEGITIMATION OF CHILDREN

Article 1.	In General.	93-17-1
------------	------------------	---------

ARTICLE 1.

IN GENERAL.

Sec.

93-17-3.	Jurisdiction for adoption or readoption proceedings; who may be adopted; who may adopt; venue of adoption proceedings; certificate of child's condition; change of name; completion of home study; compliance with Interstate Compact for Placement of Children and Indian Child Welfare Act; authorize waiver of certain procedure for adult adoptees.
----------	---

§ 93-17-3. Jurisdiction for adoption or readoption proceedings; who may be adopted; who may adopt; venue of adoption proceedings; certificate of child's condition; change of name; completion of home study; compliance with Interstate Compact for Placement of Children and Indian Child Welfare Act; authorize waiver of certain procedure for adult adoptees.

(1) Except as otherwise provided in this section, a court of this state has jurisdiction over a proceeding for the adoption or readoption of a minor commenced under this chapter if:

(a) Immediately before commencement of the proceeding, the minor lived in this state with a parent, a guardian, a prospective adoptive parent or another person acting as parent, for at least six (6) consecutive months, excluding periods of temporary absence, or, in the case of a minor under six (6) months of age, lived in this state from soon after birth with any of those individuals and there is available in this state substantial evidence concerning the minor's present or future care;

(b) Immediately before commencement of the proceeding, the prospective adoptive parent lived in this state for at least six (6) consecutive months, excluding periods of temporary absence, and there is available in this state substantial evidence concerning the minor's present or future care;

(c) The agency that placed the minor for adoption is licensed in this state and it is in the best interest of the minor that a court of this state assume jurisdiction because:

(i) The minor and the minor's parents, or the minor and the prospective adoptive parent, have a significant connection with this state; and

(ii) There is available in this state substantial evidence concerning the minor's present or future care;

(d) The minor and the prospective adoptive parent or parents are physically present in this state and the minor has been abandoned or it is necessary in an emergency to protect the minor because the minor has been subjected to or threatened with mistreatment or abuse or is otherwise neglected, and the prospective adoptive parent or parents, if not residing in Mississippi, have completed and provided the court with a satisfactory Interstate Compact for Placement of Children (ICPC) home study and accompanying forms;

(e) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (a) through (d), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to hear a petition for adoption of the minor, and it is in the best interest of the minor that a court of this state assume jurisdiction; or

(f) The child has been adopted in a foreign country, the agency that placed the minor for adoption is licensed in this state, and it is in the best interest of the child to be readopted in a court of this state having jurisdiction.

(2) A court of this state may not exercise jurisdiction over a proceeding for adoption of a minor if, at the time the petition for adoption is filed, a proceeding concerning the custody or adoption of the minor is pending in a court of another state exercising jurisdiction substantially in conformity with the Uniform Child Custody Jurisdiction Act or this section unless the proceeding is stayed by the court of the other state.

(3) If a court of another state has issued a decree or order concerning the custody of a minor who may be the subject of a proceeding for adoption in this state, a court of this state may not exercise jurisdiction over a proceeding for adoption of the minor unless:

(a) The court of this state finds that the court of the state which issued the decree or order:

(i) Does not have continuing jurisdiction to modify the decree or order under jurisdictional prerequisites substantially in accordance with the Uniform Child Custody Jurisdiction Act or has declined to assume jurisdiction to modify the decree or order; or

(ii) Does not have jurisdiction over a proceeding for adoption substantially in conformity with subsection (1)(a) through (d) or has declined to assume jurisdiction over a proceeding for adoption; and

(b) The court of this state has jurisdiction over the proceeding.

(4) Any person may be adopted in accordance with the provisions of this chapter in term time or in vacation by an unmarried adult, by a married person whose spouse joins in the petition, by a married person whose spouse does not join in the petition because such spouse does not cohabit or reside with the petitioning spouse, and in any circumstances determined by the court that the adoption is in the best interest of the child. Only the consenting adult will be a legal parent of the child. The adoption shall be by sworn petition filed in the chancery court of the county in which the adopting petitioner or petitioners reside or in which the child to be adopted resides or was born, or was found when it was abandoned or deserted, or in which the home is located to which the child has been surrendered by a person authorized to so do. The petition shall be accompanied by a doctor's or nurse practitioner's certificate showing the physical and mental condition of the child to be adopted and a sworn statement of all property, if any, owned by the child. In addition, the petition shall be accompanied by affidavits of the petitioner or petitioners stating the amount of the service fees charged by any adoption agencies or adoption facilitators used by the petitioner or petitioners and any other expenses paid by the petitioner or petitioners in the adoption process as of the time of filing the petition. If the doctor's or nurse practitioner's certificate indicates any abnormal mental or physical condition or defect, the condition or defect shall

not, in the discretion of the chancellor, bar the adoption of the child if the adopting parent or parents file an affidavit stating full and complete knowledge of the condition or defect and stating a desire to adopt the child, notwithstanding the condition or defect. The court shall have the power to change the name of the child as a part of the adoption proceedings. The word "child" in this section shall be construed to refer to the person to be adopted, though an adult.

(5) No person may be placed in the home of or adopted by the prospective adopting parties before a court-ordered or voluntary home study is satisfactorily completed by a licensed adoption agency, a licensed, experienced social worker approved by the chancery court, a court-appointed guardian ad litem that has knowledge or training in conducting home studies if so directed by the court, or by the Department of Human Services on the prospective adoptive parties if required by Section 93-17-11.

(6) No person may be adopted by a person or persons who reside outside the State of Mississippi unless the provisions of the Interstate Compact for Placement of Children (Section 43-18-1 et seq.) have been complied with. In such cases Forms 100A, 100B (if applicable) and evidence of Interstate Compact for Placement of Children approval shall be added to the permanent adoption record file within one (1) month of the placement, and a minimum of two (2) post-placement reports conducted by a licensed child-placing agency shall be provided to the Mississippi Department of Child Protection Services Interstate Compact for Placement of Children office.

(7) No person may be adopted unless the provisions of the Indian Child Welfare Act (ICWA) have been complied with, if applicable. When applicable, proof of compliance shall be included in the court adoption file prior to finalization of the adoption. If not applicable, a written statement or paragraph in the petition for adoption shall be included in the adoption petition stating that the provisions of ICWA do not apply before finalization.

(8) The readoption of a child who has automatically acquired United States citizenship following an adoption in a foreign country and who possesses a Certificate of Citizenship in accordance with the Child Citizenship Act, CAA, Public Law 106-395, may be given full force and effect in a readoption proceeding conducted by a court of competent jurisdiction in this state by compliance with the Mississippi Registration of Foreign Adoptions Act, Article 9 of this chapter.

(9) For adult adoptees who consent to the adoption, a chancellor may waive any of the petition requirements and procedural requirements within subsections (4), (5), (6) and (7) of this section.

HISTORY: Codes, 1942, § 1269-02; Laws, 1955, Ex. ch. 34, § 2; Laws, 1973, ch. 361, § 1; Laws, 1994, ch. 437, § 1; Laws, 2000, ch. 535, § 1; Laws, 2004, ch. 527, § 1; Laws, 2006, ch. 382, § 1; Laws, 2007, ch. 496, § 4; Laws, 2012, ch. 556, § 1; Laws, 2014, ch. 385, § 1, eff from and after July 1, 2014; Laws, 2020, ch. 461, § 1, eff from and after July 1, 2020; Laws, 2022, ch. 425, § 1, eff from and after July 1, 2022.

Amendment Notes — The 2022 amendment deleted (5), which read: “Adoption by couples of the same gender is prohibited”; redesignated former (6) through (9) as (5) through (8); and added (9).

§ 93-17-5. Parties to adoption proceeding; consent of child.

JUDICIAL DECISIONS

ANALYSIS

I. UNDER CURRENT LAW.

5. Necessary parties to adoption.
6. Rights of unmarried natural father.

I. UNDER CURRENT LAW.

5. Necessary parties to adoption.

Father had a constitutional right to notice if he had established a substantial relationship with the child prior to the filing of the adoption petition, and if he had established such a relationship, then the failure to give him notice and join him as a party under Miss. Code Ann. § 93-17-5(1)(a) was a jurisdictional defect and the resulting adoption decree would have to be set aside notwithstanding the statute of limitations. Remand was required.

Stacks v. Smith, 291 So. 3d 809, 2020 Miss. App. LEXIS 51 (Miss. Ct. App. 2020).

6. Rights of unmarried natural father.

There is nothing in the amendment to Miss. Code Ann. § 93-17-5(3) to suggest that the Legislature intended to impose a new requirement of notice to a biological father who has never established paternity or any substantial relationship with the child; the court simply interprets the statute in a manner consistent with the longstanding constitutional requirement of notice to a biological father who has established a substantial relationship with the child prior to the adoption. *Stacks v. Smith*, 291 So. 3d 809, 2020 Miss. App. LEXIS 51 (Miss. Ct. App. 2020).

§ 93-17-15. Limitation on action to set aside final decree.

JUDICIAL DECISIONS

2. Fraud and misrepresentation.

Father's petition alleged facts that would support a claim that the adoption was obtained by a fraud upon the court; the chancery court erred in dismissing the petition based on the statute of limitations without an evidentiary hearing be-

cause proof that the adoption was obtained by a fraud upon the court would permit the court to set aside the judgment notwithstanding the statute of limitations. *Stacks v. Smith*, 291 So. 3d 809, 2020 Miss. App. LEXIS 51 (Miss. Ct. App. 2020).

CHAPTER 19.

REMOVAL OF DISABILITY OF MINORITY

Sec.

93-19-13.

Persons eighteen years of age or older competent to contract in matters affecting personal property and for the purpose of investing in publicly traded equities; certain persons at least eighteen years of age competent to lease real property for use as residence.

§ 93-19-13. Persons eighteen years of age or older competent to contract in matters affecting personal property and for the purpose of investing in publicly traded equities; certain persons at least eighteen years of age competent to lease real property for use as residence.

(1) All persons eighteen (18) years of age or older, if not otherwise disqualified, or prohibited by law, shall have the capacity to enter into binding contractual relationships affecting personal property. In addition, all persons eighteen (18) years of age or older shall have the capacity to enter into binding contractual relationships for the purpose of investing in mutual funds, stocks, bonds and any other publicly traded equities. Nothing in this section shall be construed to affect any contracts entered into prior to July 1, 1976.

(2) Any person who, upon attaining eighteen (18) years of age, but not having reached the age of majority, was in or remains in the legal custody of the Department of Human Services or Child Protection Services and residing within a qualified residential child care agency, as defined in Section 37-106-81, at any time on or after attaining thirteen (13) years of age, if not otherwise disqualified or prohibited by law, shall have the capacity to enter into binding agreements to lease real property to be occupied by the person as the actual place of residence, and to secure the necessary utility services necessary to make such place of residence habitable, including, but not limited to, electricity, natural gas, propane, water, sewage, garbage disposal and Internet services.

(3) In any legal action founded on a contract entered into by a person eighteen (18) years of age or older, the said person may sue in his own name as an adult and be sued in his own name as an adult and be served with process as an adult.

HISTORY: Laws, 1976, ch. 406, § 3, eff from and after July 1, 1976; Laws, 2021, ch. 338, § 1, eff from and after July 1, 2021; Laws, 2022, ch. 440, § 3, eff from and after July 1, 2022.

Amendment Notes — The 2022 amendment designated the formerly undesignated two paragraphs as (1) and (3); and added (2).

CHAPTER 21.

PROTECTION FROM DOMESTIC ABUSE

ARTICLE 1.

PROTECTION FROM DOMESTIC ABUSE LAW.

§ 93-21-15.1. Appeal of temporary or final domestic abuse protection order.

JUDICIAL DECISIONS

1. Jurisdiction.

Circuit court properly denied an ex-husband's appeal of a domestic abuse protection order for lack of jurisdiction because, while the court found that the order was interlocutory, there was no statutory distinction that classified a final domestic

abuse protection order as interlocutory and not subject to review, and if the ex-husband wished to seek an appeal from the order, he had to do so in chancery court. *Carter v. Carter*, 304 So. 3d 1160, 2020 Miss. App. LEXIS 571 (Miss. Ct. App. 2020).

